

Docket No.: KC-0040

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCE**

In re Application of:

Confirmation No.: 3714

Mike KINSELLA and John Law McGUIRE Group Art Unit: 2682

Serial No.: 09/592,563

Examiner: Lee NGUYEN

Filed: June 12, 2000

Customer No.: 34610

For: MESSAGING SYSTEM

APPEAL BRIEF

U.S. Patent and Trademark Office
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Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed August 4, 2004.

REAL PARTY IN INTEREST

The party in interest is the assignee, SAW-YOU.com, a United Kingdom corporation.

The assignment document is recorded at Reel 010890 and Frame 0225.

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RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

STATUS OF THE CLAIMS

This is an appeal from the final rejection dated February 18, 2004 of claims 1-27 and 29-46. No other claims are pending.

STATUS OF AMENDMENTS

All Amendments filed in this application have been entered. A correct copy of appealed claims 1-27 and 29-46, including all entered amendments thereto, appears in the attached Appendix.

SUMMARY OF THE INVENTION

The invention relates to a messaging system for sending a message from a sender to a recipient selected by the sender without necessarily knowing an identity of the selected recipient. This type of messaging system is useful, for example, with an introduction and dating system, where a sender may observe someone in a particular location but not know their identity. In this instance, this system allows the sender to send a message to the specifically selected recipient without actually knowing their identity or any specific contact information.

There are numerous introduction and dating services currently available. These services include newspaper ads, which allow a sender, or requesting subscriber, to list preferences in hopes that a reader with similar preferences will respond. These also include computer services, which typically require that a requesting subscriber enter a list of personal preferences, including sex, age, physical characteristics, hobbies, and the like, into a database, where they are matched to other subscribers with similar attributes and/or preferences. In either of these instances, the requesting subscriber is merely hoping for a response from a fellow subscriber with matching preferences, and there is no specifically intended recipient. Thus, these services would not allow a requesting subscriber who has observed someone, whom they do not know, in a particular location and at a particular time, to send a message to that specifically intended recipient whose identity is unknown, but whom the requesting subscriber has specifically selected.

In contrast, the messaging system disclosed in the present application allows the requesting subscriber to send a message directly to a specifically intended recipient whose identity is unknown to the requesting subscriber simply based on observed physical characteristics and possibly a location using communications devices which are capable of sending and receiving messages, such as mobile telephone devices. The message may be sent as a text message, an email message, a visual message, or a multi-media message, based on the sender's preference and the capability of the communications devices being used.

More specifically, Figure 1 of the present application shows a central message pushing system 1 including a database of personal details 2. Subscribers to this service provide

information for entry into the database of personal details, such as contact information, sex, age, physical attributes, and the like. The database of personal details 2 may be updated as the subscriber sees fit, and may also include information such as a description of the clothing the subscriber is currently wearing, and listings of past, current, and frequently visited locations.

When a subscriber observes someone he/she is interested in initiating communication with, the subscriber may use his communication device 3 to compose a message to this specifically selected recipient. The requesting subscriber also prepares a description of this specifically selected recipient, including physical attributes, clothing, location, time, and the like. The requesting subscriber's message is then transmitted via a communications link 5 to the central message pushing system 1. The central message pushing system 1 then interrogates the database 2 to establish the identity of the intended recipient of the message based on the description prepared by the requesting subscriber. In some cases, the central message pushing system might select two or more people as the likely intended recipient of the requesting subscribers message. The requesting subscriber's message may then be transmitted to the selected recipient's communications device 4 via a telecommunications link 5.

Thus, the messaging system disclosed in the present application allows a user to select a specific recipient and send a message to the selected recipient without actually knowing the recipient's identity.

ISSUES

1. Whether the Examiner has established a *prima facie* case under 35 U.S.C. §102(e) that claims 1-4, 9, 11, 15, 17-19, and 22 are anticipated by U.S. Patent No. 6,549,768 to Fraccaroli (hereinafter “Fraccaroli”); and

2. Whether the Examiner has established a *prima facie* case under 35 U.S.C. §103(a) that claims 5-8, 10, 12-14, 16, 20-21, 23-27, and 29-46 are obvious over Fraccaroli.

GROUPING OF THE CLAIMS

Appealed claims 1-6 and 9-22 form a single group and stand or fall together. Claim 1 is the only independent claim in this group.

Appealed claim 7 depends from claim 5 and forms a separate group that is allowable for additional reasons.

Appealed claim 8 depends from claim 5 and forms a separate group that is allowable for additional reasons.

Appealed claims 23-27, 29 and 32-45 form a single group and stand or fall together. Claim 23 is the only independent claim in this group.

Appealed claim 30 depends from independent claim 23 and forms a separate group that is allowable for additional reasons.

Appealed claim 31 depends from independent claim 23 and forms a separate group that is allowable for additional reasons.

Appealed claim 46 is an independent claim which forms a single group.

THE ARGUMENT

Fraccaroli discloses various systems for matching people with similar interests. One such system is a computer dating service, in which a requesting subscriber first provides information to a central database to establish an individual profile, including personal information as well as other preferences. The individual profile is then used by the database to match the requesting subscriber with other subscriber(s) based on their individual profiles. The central database would then provide a listing of resulting matches, if any (see column 1, lines 28-48 of Fraccaroli).

In the dating service described in Fraccaroli, selection of appropriate matches is left to the computer database. The requesting subscriber cannot select matches on his own. Further, submitting a request for a match does not constitute a message that is to be sent to an intended recipient, as there is no intended recipient in this instance. Rather, recipients are selected by the database. Additionally, while this type of computer dating service can store and use a subscriber's address as a component of the matching criteria, it does not indicate a subscriber's specific location, nor does it periodically update a subscriber's location at a particular time (see column 1, lines 54-60 of Fraccaroli).

Another system disclosed in Fraccaroli is a wearable device which detects when another similar device is within short range. These "hot badges" may be pre-loaded with a limited amount of personal information, and signal each other when they happen to be storing similar

personal information and are in short range of one another (see column 1, line 62 – column 2, line 6 of Fraccaroli). However, the hot badges suffer deficiencies similar to those of the computer dating services described above, in that a match is established by a query conducted by the badges, and the wearer is not given an opportunity to select or identify an intended recipient of a message based on his own observation of that intended recipient. Also, this system does not allow a subscriber to send a personalized message to a selected intended recipient.

Fraccaroli also discloses a mobile communications matching system which enables subscribers who have established an individual profile in a central database (such as that described above) to be matched with other subscribers who may happen to be in the same geographic location at a particular time. However, in this system, like those described above, the requesting subscriber does not select an individual intended recipient on his own, nor does the requesting subscriber send a message to a central system that includes details of the appearance and specific location of an intended recipient for his message. Rather, as in the other prior art systems, matches are selected by a computer database.

Fraccaroli discloses that known cellular phone network technology may be used to provide location information to the central database so that the location information may be used in matching. As a subscriber enters a particular service area 103, the subscriber's mobile station 102 must typically register with a servicing base station to allow incoming calls to be properly routed to the mobile station 102. This requires that a home location register (HLR) 105 associated with the mobile station 102 communicate with an appropriate visitor location record

(VLR) 104 within the new service area 103 to exchange current location data for a particular subscriber. Thus, each HLR 105 knows the location of each of its active mobile stations 102.

Fraccaroli teaches the addition of a server 106 and matching engine 107 to each HLR 105 to match individual profiles stored in the server 106 for each active mobile station 102 in a service area 103. Matches generated by the matching engine 107 are then provided to a requesting subscriber, who may elect to send a message to the matches selected by the matching engine 107 (see column 5, lines 8-11 and 31-40). Again, as with the prior art disclosed by Fraccaroli, recipients are selected by the matching engine 107, and the requesting subscriber does not select an individual intended recipient on his own, nor does the requesting subscriber send a message to a central system that includes details of the appearance and specific location of an intended recipient for his message.

Fraccaroli further discloses a manner in which the matching system may signal a requesting subscriber that a person whose identity is already known by the requesting subscriber has entered a particular location. However, to do this, the requesting subscriber must know in advance the specific identity of the intended recipient, either by USER ID, name, or other identifying parameter associated with the recipient. (see column 2, lines 55-60 and column 10, lines 63-67 of Fraccaroli).

I. Claims 1-6 and 9-22 Are AllowableA. Claims 1-4, 9, 11, 15, 17-19, and 22

Independent claim 1 is directed to a message pushing system which sends messages to individual potential intended recipients. More specifically, independent claim 1 recites, *inter alia*, a message pushing system being adapted to receive a message from a message sending device, the message comprising details of the intended recipient of the message. Independent claim 1 further recites that the message pushing system compares the details of the intended recipient of the message with the database of potential recipient's details, thereby establishing one or more members who may be the intended recipient, and that the message pushing system is adapted to transmit said message to the message receiving means of the one or more members who may be the intended recipient.

As set forth above, Fraccaroli does not disclose or suggest any sort of message pushing system wherein a message comprising details of an intended recipient of the message is sent to the system. Fraccaroli also fails to disclose a system wherein the system makes a comparison of the details of an actual intended recipient of the message with the database of potential recipient details to determine the identities of one or more members who may be the recipient selected by the user. Finally, the Fraccaroli systems do not transmit the message to the message receiving means of the selected members who may be the intended recipient.

Instead, in each of the systems disclosed in Fraccaroli are limited to systems that provide a database generated listing of potential matches. There is simply no intended recipient selected

by the user in each of the Fraccaroli systems. For this reason, Fraccaroli necessarily cannot disclose a system wherein the system receives a message with details about an intended recipient, nor can Fraccaroli disclose a system that identifies or sends a message to an intended recipient.

For all of the above reasons, it is respectfully submitted that independent claim 1 is allowable. Dependent claims 2-4, 9, 11, 15, 17-19, and 22 are allowable at least for the reasons set forth with respect to independent claim 1, from which they depend, as well as for their added features. Withdrawal of the rejection of these claims over Fraccaroli under 35 U.S.C. § 102(e) is respectfully requested.

B. Claims 10, 12-14, 16, and 20-21

Claims 5, 6, 10, 12-14, 16, and 20-21 all depend from claim 1 and are allowable over Fraccaroli at least for the reasons set forth above with respect to independent claim 1, as well as for their added features. As explained above, Fraccaroli fails to disclose many of the features recited in these claims. Further, nothing in Fraccaroli would make the missing features obvious to one of ordinary skill in the art.

Accordingly, it is respectfully submitted that claims 5, 6, 10, 12-14, 16, and 20-21 are allowable over Fraccaroli, and thus the rejection of claims 5, 6, 10, 12-14, 16, and 20-21 under 35 U.S.C. §103(a) should be withdrawn.

II. Claim 7 Is Allowable

Claim 7 depends from claims 1 and 5 and further recites that the database includes information about frequently visited locations of an intended recipient. In addition to the deficiencies discussed above with respect to independent claim 1, Fraccaroli does not disclose or suggest any message pushing systems that store frequently visited locations. In the only system disclosed in Fraccaroli as using location information, the location information maintained by the system is limited to a location of the subscriber upon registration in the particular service area 103 for the purposes of call routing. In other words, the Fraccaroli system only knows the immediate general location of the subscriber. The Fraccaroli systems makes no provision for the collection and storage of frequently visited locations. Fraccaroli does not disclose or suggest that this location information could include a listing of other locations outside of the single location identified upon registration, nor that it would be beneficial, nor that the system could be readily adapted to do so. Accordingly, the rejection of claim 7 under 35 U.S.C. 103(a) should be withdrawn.

III. Claim 8 Is Allowable

Claim 8 depends from claims 1 and 5 and further recites that the information about the location of the recipient includes previous locations. In addition to the deficiencies discussed above with respect to independent claim 1, Fraccaroli does not disclose or suggest a message pushing system that stores previously visited locations. Rather, as set forth above, the location

information maintained by the Fraccaroli system is limited to the immediate general location of the subscriber. The Fraccaroli system makes no provision for the collection and storage of previously visited locations. Fraccaroli does not disclose or suggest that this location information could also include a listing of previous locations outside of the single location identified upon registration, nor that it would be beneficial to do so, nor that the system could be readily adapted to do so. Accordingly, the rejection of claim 8 under 35 U.S.C. 103(a) should be withdrawn.

IV. Claims 23-27, 29 and 32-45 Are Allowable

Independent claim 23 is directed to a method of transmitting a message to an intended recipient. More specifically, independent claim 23 recites, *inter alia*, receiving messages at a central message pushing system, the messages including details of the appearance and location of the intended recipient for a message, and comparing the details of the appearance and location of the intended recipient with the details stored in the database.

As set forth above, Fraccaroli does not disclose or suggest a method that includes receiving a message comprising details of an intended recipient of the message, nor that those details include an appearance and location of the intended recipient. Fraccaroli also does not disclose a method that includes conducting a comparison of the details of the intended recipient of the message with the database of potential recipients so as to establish one or more members who may be the recipient selected by the user. These steps cannot be performed by any of the

systems disclosed in Fraccaroli because in each of the Fraccaroli methods, there is no intended recipient. Rather, the methods of Fraccaroli are limited to providing a listing of potential matches generated by a database. There is simply no intended recipient selected by the user in any of the Fraccaroli methods.

For all the above reasons, it is respectfully submitted that independent claim 23 is allowable over Fraccaroli. Dependent claims 24-27, 29, and 32-45 are allowable at least for the reasons discussed above with respect to independent claim 23, from which they depend, as well as for their added features. Withdrawal of the rejection of these claims under 35 U.S.C. § 102(e) is respectfully requested.

V. Claim 30 Is Allowable

Claim 30 depends from claim 23 and further recites that the information about the location of individual potential recipients includes frequently visited locations. In addition to the deficiencies discussed above with respect to independent claim 23, Fraccaroli does not disclose or suggest that messages generated by Fraccaroli's mobile communications matching system include information about frequently visited locations of intended recipients, nor that it would be beneficial to do so, nor that the system could be easily adapted to do so. Rather, as set forth above, the location information is maintained by the Fraccaroli system is not contained in a message, and is limited to an immediate general location of the subscriber. The Fraccaroli system makes no provisions for the collection and storage of frequently visited locations.

Accordingly, it is respectfully submitted that claim 30 is allowable over Fraccaroli, and thus the rejection of claim 30 under 35 U.S.C 103(a) over Fraccaroli should be withdrawn.

VI. Claim 31 Is Allowable

Claim 31 depends from claim 23 and further recites that the information about the location of individual potential recipients includes previous locations. In addition to the deficiencies discussed above with respect to independent claim 23, Fraccaroli neither discloses nor suggests that messages generated by Fraccaroli's mobile communications matching system include information about previously visited locations of intended recipients, nor that it would be beneficial to do so, nor that the system could be easily adapted to do so. Rather, as set forth above, the location information maintained by the Fraccaroli system, and not contained in a message, is limited to an immediate general location of the subscriber. The Fraccaroli system makes no provisions for the collection of previously visited locations.

Accordingly, it is respectfully submitted that claim 31 is allowable over Fraccaroli, and thus the rejection of claim 31 under 35 U.S.C 103(a) over Fraccaroli should be withdrawn.

VII. Claim 46 Is Allowable

Independent claim 46 is directed to a message pushing system which sends messages to recipients. The system includes a database of personal characteristics of individual potential recipients, and a plurality of communication links configured to communicate with message

sending and receiving devices. Claim 46 recites that the system is configured to receive a message from a sending device, the message comprising personal characteristics of an intended recipient of the message based on personal characteristics observed by a user of the message sending device. Claim 46 further recites that the system is configured to compare the personal characteristics provided by the message with the database, and to transmit the message to receiving devices of one or more potential intended recipients based on the comparison.

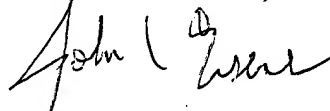
As set forth above, Fraccaroli neither discloses nor suggests the above described features of claim 46. More specifically, none of the Fraccaroli systems contemplate that there would be a specific intended recipient. For this reason, none of the Fraccaroli systems can possibly operate as recited in claim 46. Further, while the Fraccaroli systems allow a requesting subscriber to list preferences, these attributes are not personal characteristics of a specific intended recipient which are observed by a user.

For all the above reasons, it is respectfully submitted that independent claim 46 is allowable over Fraccaroli, and thus the rejection of independent claim 46 under 35 U.S.C. 103(a) over Fraccaroli should be withdrawn.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the Examiner has failed to establish a case under 35 U.S.C. §102(e) that claims 1-4, 9, 11, 15, 17-19, and 22 are anticipated by Fraccaroli. It is also respectfully submitted that the Examiner has failed to establish a *prima facie* case under 35 U.S.C. §103(a) that claims 5-8, 10, 12-14, 16, 20-21, 23-27, and 29-46 are obvious over Fraccaroli in view of Fraccaroli. For these reasons, withdrawal of the rejections and further action on the merits is respectfully requested.

Respectfully submitted,
FLESHNER & KIM, LLP

A handwritten signature in black ink, appearing to read "John C. Eisenhart", written over the printed name.

John C. Eisenhart
Registration No. 38,128

P. O. Box 221200
Chantilly, Virginia 20153-1200
703 766-3701 JCE:JKM/par
Date: November 2, 2004

APPENDIX

1. (Previously Presented) A message pushing system for sending messages to recipients, the system comprising:

a database of details of individual potential recipients; and

telecommunications links for communicating with message sending and message receiving devices, the message pushing system being adapted to receive a message from a message sending device, the message comprising details of the intended recipient of the message, wherein the message pushing system compares the details of the intended recipient of the message with the database of potential recipient's details thereby establishing one or more members who may be the intended recipient, the message pushing system being adapted to transmit said message to the message receiving means of the one or more members who may be the intended recipient.

2. (Original) The message pushing system of Claim 1 wherein the details of individual potential recipients include details of the individual's physical appearance.

3. (Original) The message pushing system of Claim 2 wherein the details are selected from a list comprising their sex, their hair length and colour, their eye colour, their age, their skin colour, their height, and their clothing.

4. (Original) The message pushing system of Claim 2 wherein the database includes one or more of the e-mail address, mobile telephone number, name, address or other contact details of individual potential recipients.

5. (Original) The message pushing system of Claim 2 wherein the database also includes information about the location of the recipient.

6. (Original) The message pushing system of Claim 5 wherein the information about the location of the recipient includes the current location of the recipient.

7. (Original) The message pushing system of claim 5 wherein the information about the location of the recipient includes frequently visited locations.

8. (Original) The message pushing system of claim 5 wherein the information about the location of the recipient includes previous locations.

9. (Original) The message pushing system of Claim 1 adapted to allow potential recipients to update their details.

10. (Original) The message pushing system of Claim 9 adapted to enable potential recipients to update their details automatically.

11. (Original) The message pushing system of Claim 9 adapted to enable potential recipients to update their details using their message sending means.

12. (Original) The message pushing system of Claim 1 adapted to allow messages to be delivered to recipients without the sender of the message knowing the identity of the recipient.

13. (Original) The message pushing system of Claim 1 wherein the comparison between the details of the potential recipient and member's details on the database does not need to be exact.

14. (Original) The message pushing system of Claim 13 wherein the database also includes information about how close a match between details is required for that message to be sent to that potential recipient.

15. (Previously Presented) The message pushing system of Claim 1 wherein one device can function as both a message sending device and a message receiving device.

16. (Previously Presented) The message pushing system of Claim 15 wherein the message sending device and message receiving device are mobile telephones using WAP or I-MODE.

17. (Original) The message pushing system of Claim 1 wherein the telecommunications links may comprise the Internet.

18. (Original) The message pushing system of Claim 1 wherein the message comprises one of an e-mail, a text message, a visual message or a multi-media message.

19. (Original) The message pushing system of Claim 1 wherein the database is a relational database.

20. (Original) The message pushing system of Claim 1 wherein the message is transmitted to the recipient or recipients only on request from the recipient or recipients.

21. (Original) The message pushing system of Claim 20 wherein a web site is used to display the message.

22. (Original) A messaging system comprising the message pushing system of Claim 1 and a plurality of message sending and message receiving means, adapted to send messages to and receive message from the message pushing system.

23. (Previously Presented) A method of transmitting a message to one or more recipients, the method comprising the steps of:

(a) creating a database of details of the appearance and location of individual potential recipients for messages;

(b) receiving messages at a central message pushing system the messages including details of the appearance and location of the intended recipient for a message; and

(c) comparing the details of the appearance and location of the intended recipient with the details stored in the database, thereby identifying one or more possible intended recipients.

24. (Previously Presented) The method of Claim 23 further comprising the step of sending the message to message receiving means belonging to the possible intended recipients.

25. (Original) The method of Claim 23 wherein the details of individual potential recipients include details of the individual's physical appearance.

26. (Original) The method of Claim 25 wherein the details are selected from a list comprising their sex, their hair length and colour, their eye colour, their age, their skin colour, their height, and their clothing.

27. (Previously Presented) The method of Claim 23 wherein the database also includes the e-mail address, mobile telephone number, name, address or other contact details of individual potential recipients.

28. (Cancelled)

29. (Previously Presented) The method of Claim 23 wherein the information about the location of individual potential recipients includes the current location of the recipient.

30. (Previously Presented) The method of claim 23 wherein the information about the location of individual potential recipients includes frequently visited locations.

31. (Previously Presented) The method of claim 23 wherein the information about the location of individual potential recipients includes previous locations.

32. (Previously Presented) The method of claim 23 wherein the database also includes information about how close a match between details is required for a message to be sent to that potential recipient.

33. (Previously Presented) The method of Claim 23 adapted to allow potential recipients to update their details.

34. (Previously Presented) The method of Claim 33 adapted to enable potential recipients to update their details automatically.

35. (Previously Presented) The method of Claim 33 adapted to enable potential recipients to update their details using a message sending means.

36. (Previously Presented) The method of Claim 24 wherein messages are delivered to recipients without the sender of the message knowing who the recipient is.

37. (Previously Presented) The method of Claim 23 wherein the comparison between the details of the potential recipient and member's details on the database does not need to be exact.

38. (Previously Presented) The-method of Claim 37 wherein the database also includes information about how close a match between details is required for a message to be sent to that potential recipient.

39. (Previously Presented) The method of Claim 24 wherein one device can function as both a message sending means and a message receiving means.

40. (Previously Presented) The method of Claim 39 wherein the message sending means and message receiving means are mobile telephones using WAP or I-MODE.

41. (Previously Presented) The method of Claim 23 wherein telecommunications links are used to receive and send messages, and wherein the telecommunications links may comprise the Internet.

42. (Previously Presented) The method of Claim 23 wherein the message comprises one of an e-mail, a text message, a visual message or a multi-media message.

43. (Previously Presented) The method of Claim 23 wherein the database is a relational database.

44. (Previously Presented) The method of Claim 24 wherein the message is transmitted to the recipient or recipients only on request from the recipient or recipients.

45. (Previously Presented) The method of Claim 44 wherein a web site is used to display the message.

46. (Previously Presented) A message pushing system configured to send messages to recipients, the system comprising:

a database of personal characteristics of individual potential recipients; and
a plurality of communications links configured to communicate with a plurality of message sending devices and a plurality of message receiving devices, wherein the message pushing system is configured to receive a message from a message sending device, the message comprising personal characteristics of an intended recipient of the message based on personal characteristics observed by a user of the message sending device, and wherein the message pushing system is configured to compare the personal characteristics provided by the message with the database of personal characteristics of individual potential recipients, and to transmit the message to message receiving devices of one or more individual potential recipients who may be the intended recipient of the message based on the comparison.